UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JACOB DAVID WOOLERY,

Plaintiff,

v.

SHASTA COUNTY JAIL, et al.,

Defendants.

No. 2:21-cv-0270 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this court is plaintiff's first amended complaint ("FAC"). For the reasons stated below, plaintiff will be given a final opportunity to file an amended complaint.

I. SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.

Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

II. FIRST AMENDED COMPLAINT

Plaintiff names as defendants Shasta County Sheriff and Coroner Eric Magrini; Captain and Warden Gene Randall; Facility Manager Lieutenant Marlar; Deputy Leonard; "Daniel," a medical practitioner; the Shasta County Jail; and the County of Shasta. ECF No. 10 at 1-2. The FAC consists in large part of a lengthy, chronological narrative related to state and local officials' creation of health protocols intended to reduce the spread of COVID-19, and Shasta County Jail's implementation of or failure to implement them. See generally id. at 4-13.

Plaintiff alleges generally that defendants violated his Eighth Amendment rights when they failed to effectively implement state-sanctioned health and safety protocols in order to reduce the spread of the virus. ECF No. 10 at 11-13. For example, plaintiff states that he has been denied a face mask and COVID-19 testing, and that on multiple occasions he has been detained in close proximity to inmates who were being quarantined. Id. at 13-14. He alleges that

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he contracted the virus as a result, which resulted in pain and agony and the fear of death. Id. at 4, 15-16.

III. DISCUSSION

A. Applicable Law

"[A] prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious; a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities." Id. at 834 (internal quotation marks and citations omitted). This first requirement is satisfied by "demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." Lemire v. California Dept. of Corrections and Rehabilitation, 726 F.3d 1062, 1081 (9th Cir. 2013).

Second, the prison official must have a sufficiently culpable state of mind, "one of deliberate indifference to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (internal quotation marks and citations omitted). This second prong is "satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations, punctuation and quotation marks omitted); accord, Lemire, 726 F.3d at 1081; Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012). Deliberate indifference "may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care." Jett, 439 F.3d at 1096 (quoting Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988)); accord, Lemire, 726 F.3d at 1081; Wilhelm, 680 F.3d at 1122.

B. Analysis

At the outset the court notes that the FAC violates Rule 8 of the Federal Rules of Civil Procedure, which requires that a pleading consist of a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Plaintiff's nineteen-page complaint, which reads like a chronological narrative of correctional facilities' responses to the pandemic, does not comply with the rule. This fact alone is grounds for dismissal. See, e.g.,

Agnew v. Moody, 330 F.2d 868, 870 (9th Cir. 1964) (finding district court justified in dismissing complaint for failure to comply with Rule 8(a)). "[A] court is not required to comb through a plaintiff's exhibits . . . to determine if the complaint states a plausible claim." Kesling v. Tewalt, 476 F. Supp. 3d 1077, 1083 (D. Idaho 2020) (brackets added).

Next, as with the original complaint, the FAC fails to state claims upon which relief may be granted. The pleading is peppered with statements like, "Shasta County Jail continues to have serious constitutional violations in its response to the COVID-19 pandemic," (ECF No. 10 at 11-12), and "The policies implemented by Captain Randall were silent as to how existing inmates could effectively socially distance from each other," (id. at 12). Such general statements fail to identify specific, intentional acts or omissions by any of the named defendants, and they fail to show how such acts or omissions led to plaintiff's specific harms. This issue was addressed in the previous screening order, ECF No. 8 at 3-5, and it has not been cured. The FAC also lacks specific factual allegations showing that the acts or omissions of any particular defendant were accompanied by the requisite "culpable state of mind," deliberate indifference.

Because the FAC fails to provide a short and plain statement which demonstrates that plaintiff is entitled to relief, and because it fails to allege with specificity any viable claims against any of the named defendants, this complaint fails to state any claim upon which relief may be granted. See 28 U.S.C. § 1915A(b)(1). As a result, it cannot be served. Plaintiff will, however, be given a final opportunity to amend the complaint.

IV. LEAVE TO AMEND

When amending the complaint, plaintiff should observe the following: An amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation).

An amended complaint must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a). Plaintiff may not change the nature of this suit by alleging

new, unrelated claims. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it is complete in itself without reference to any earlier filed complaint. See L.R. 220 (E.D. Cal. 2009). This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) ("The amended complaint supersedes the original, the latter being treated thereafter as non-existent."), overruled on other grounds by Lacey v. Maricopa Cty., 693 F.3d 896 (2012).

The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8. Plaintiff must not include any preambles, introductions, argument, speeches, explanations, stories, griping, vouching, evidence, attempts to negate possible defenses, summaries, and the like. McHenry v. Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for violation of Rule 8 after warning); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998) (reiterating that "firm application of the Federal Rules of Civil Procedure is fully warranted" in prisoner cases). The court (and defendant) should be able to read and understand plaintiff's pleading within minutes. McHenry, 84 F.3d at 1179-80. A long, rambling pleading including many defendants with unexplained, tenuous, or implausible connection to the alleged constitutional injury, or joining a series of unrelated claims against many defendants, very likely will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff's action pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

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V. PLAIN LANGUAGE SUMMARY OF THIS ORDER FOR A PRO SE LITIGANT

Your First Amended Complaint will not be served. You may file a Second Amended Complaint. It must contain short, clear statements showing how your own rights were violated and what each particular defendant did that violated your rights. Because you are trying to bring Eighth Amendment claims, you must also state facts as to each defendant that show that defendant's state of mind when they did or failed to do the things that violated your rights.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall send plaintiff another copy of the Civil Rights Complaint By A Prisoner form used by this court;

2. Within thirty days from the date of this order, plaintiff shall file an amended complaint.

Plaintiff is cautioned that failure to comply with this order within the time allotted may result in a recommendation that this action be dismissed.

DATED: June 16, 2023

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE